IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.410 OF 2005
IN
CRIMINAL APPLICATION NO.5684 OF 2004
IN
CRIMINAL APPEAL NO.1167 OF 2004

Yasir Zaki Khan .. Applicant

v/s.

The State of Maharashtra .. Respondent.

Mr.A.H.H.Ponda for applicant.

Ms.Usha Kejariwal, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 10th February, 2005

P.C.

Heard Mr.A.H.H.Ponda, the learned counsel for the applicant and Ms.Usha Kejariwal, the learned APP.

2. On 23rd December, 2004, this court passed the following order in criminal application No. 5684 of 2004 in criminal appeal No.1167 of 2004:-

> "1. Heard Mr.Ponda, the learned counsel for the applicant and Mr.B.H.Mehta, the learned APP for the State.
>
> 2. The learned counsel for the applicant has taken us through the statements of the prosecution witnesses and pointed out that

at the time of incident, dead body was found in the building below the staircase wrapped in the bedsheet at about 9 a.m. on 29.7.2002. There is evidence to show that the flat where the accused/applicant was residing was locked and the applicant was not seen thereafter. It is further in the evidence of P.W.4 that the said flat was opened by the police behind and back of the applicant. All the incriminating articles have been found in the said flat after 10 days when the accused made a statement under section 27. There is also evidence to show that the bloodstained clothes were having fresh blood. Therefore, it is submitted that those were planted material. There cannot be fresh bloodstain on the clothes when the incident had taken place 10 days earlier. The flat was opened behind and back of the applicant/accused which makes this theory of plantation of these articles in the flat No.102 belonging to the accused behind his absence possible one. Except recovery of these incriminating articles, there is no direct evidence to connect the applicant/accused with this incidence. No motive is brought on record. Dead person is unknown person and therefore, only evidence is under section 27. Prima facie it is a case where sentence should be suspended. Applicant was on bail during the trial. That also persuade us to grant bail to the applicant/accused. Hence following order.

ORDER

(i) The sentence passed by the Addl. Sessions Judge, Gr.Bombay dated 20.7.2004 in Sessions Case No.1076 of 2002 is hereby suspended till final disposal of the appeal.

(ii) The applicant/accused be released on bail on furnishing P.R.bond of Rs.20,000/- with surety in like amount. Applicant will give local surety.

(iii) The applicant/accused shall attend Versova Police Station once in a week."

3. By this application, the applicant prays that he may be permitted to furnish a surety from Thane district instead of Mumbai.

4. During the course of hearing of this criminal application, the learned counsel for the applicant showed the willingness on the part of the applicant to furnish two sureties of the amount that may be fixed by this court from Thane district.

5. The learned Additional Public Prosecutor left the matter to the court.

6. Having considered all the aspects, we are satisfied that the following order shall meet the ends of justice:-

Clause (ii) of the operative order dated 23.12.2004 is substituted by the following clause (ii):

> The applicant shall be released on bail on furnishing P.R. Bond of Rs.20,000/- with two sureties in the sum of Rs.50,000/- each to the satisfaction of the trial court.

7. Save and except the aforesaid modification, the

order dated December 23, 2004 stands as it is.

8. Criminal application stands disposed of.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)